

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE:)
AREDIA and ZOMETA PRODUCTS)
LIABILITY LITIGATION) NO. 3:06-MD-1760
) JUDGE CAMPBELL
This Document Relates To Case Number:)
)
3:06-0378 (Gee)) 3:06-0518 (Prose)
3:06-0815 (Frazier)) 3:06-0817 (Kuzara)
3:06-0960 (Waller)) 3:06-0975 (Wegner)
3:06-0977 (Cherry)) 3:06-1026 (Summers)
3:06-1031 (Shelly Martin)) 3:07-0007 (Anne Davis)
3:07-0394 (Grant)) 3:07-0567 (Raso
3:07-0571 (Preston)) 3:07-0572 (Benabise)

ORDER

Pending before the Court are a Report and Recommendation of the Magistrate Judge (Docket No. 7011), Objections filed by the Defendant (Docket No. 7038), and Plaintiffs' Response to the Objections (Docket No. 7088).

Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(3) and Local Rule 72.03(b)(3), the Court has reviewed *de novo* the Report and Recommendation, the Objections, the Response, and the file. The Objections of the Defendant are overruled, and the Report and Recommendation is adopted and approved.

For the reasons stated by the Magistrate Judge, the Court orders the following:

1. The Case Management Order (“CMO”) (Docket No. 89) is amended to dispense with further briefing on the pending motions in the above-captioned cases only.
2. Defendant's Motions to Vacate and Motions to Dismiss in the above-captioned cases (Docket Nos. 6723, 6919, 6915, 6811, 6836, 6785, 6627, 6938, 6838, 6846, 6954, 6894, 6948, and 6935) are DENIED.
3. Plaintiffs in the above-captioned cases shall comply, within thirty (30) days of the date of this Order, with the substitution requirements of Rule 25(a) and ¶ V of the CMO.

4. Plaintiffs in the above-captioned cases shall, within thirty (30) days of the date of this Order, either:

- (a) Open probate in accordance with ¶ V of the CMO and file copies of letters of administration/letters testamentary issued by the appropriate state authority to show that Plaintiffs in the above-captioned cases have the legal authority and capacity under applicable state law to proceed in these cases upon remand; or
- (b) Provide proof that probate has been opened in any of the above-captioned cases in which letters of administration/letters testamentary have not yet been issued, with an estimate as to when those letters will be issued; or
- (c) Provide appropriate law and argument if it is contended that there is an alternative procedure under state law to appoint a personal representative of a deceased plaintiff's estate.

5. Plaintiffs in the above-captioned cases are FOREWARNED that failure to comply with Rule 25(a) of the Federal Rules of Civil Procedure, the CMO, or this Order by the times specified could result in the respective cases being dismissed with prejudice and/or sanctions being imposed for failure to obey the Orders of the Court.

6. Plaintiffs' counsel in each of the above-captioned cases shall serve a copy of this Order upon the individual Plaintiff in each case.

7. Plaintiffs' counsel in the above-captioned cases shall immediately take steps to comply with Rule 25(a) and the CMO in all other cases in which counsel represents Plaintiffs in this MDL.

8. Counsel for the Plaintiffs in the above-captioned cases shall immediately take steps to complete discovery.

IT IS SO ORDERED.

Todd Campbell
TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE